

REMARKS

This amendment responds to the Office Action dated March 17, 2004.

The Examiner rejected claims 7-11 under 35 U.S.C. § 101 (statutory double patenting) because claims 7-11 were identical to claims 1-5 of the applicant's prior U.S. Patent No. 6,647,895. Independent claim 7, from which claims 8-11 each depend, has been amended to replace the element of "a plurality of upright members" with "an upright member." Claims 7-11 are each broader in scope than their respective corresponding claims in the '895 patent; accordingly, the Examiner's statutory double patenting rejection is overcome. Enclosed is a terminal disclaimer that precludes a non-statutory double patenting rejection. Therefore, the applicant respectfully requests that the Examiner allow claims 7-11 of the present application.

The Examiner rejected claims 1-6 under 35 U.S.C. § 103(a) as being obvious in view of the combination of Clark, et al., U.S. Patent No. 6,470,808 (hereinafter Clark), Weiner, U.S. Patent No. 6,183,176 (hereinafter Weiner), and Kennedy, U.S. Patent No. 5,150,940 (hereinafter Kennedy). Independent claim 1, from which claims 2 and 3 depend, includes the element of a "top chord having a selectively affixable member including a lateral face arranged to contact a cargo supported by said floor and resist a lateral displacement thereof in a direction substantially normal to said lateral face." Independent claim 4, from which claims 5 and 6 each depend includes the element of "a top chord cover selectively affixable to said top and bottom of said top chord and extending therebetween to substantially cover said lateral wall of said top chord." The Examiner contends that it would have been obvious to combine the teachings of Clark, Weiner, and Kennedy and that the resulting combination includes the respective elements of claims 1 and 4 recited above. The Examiner's rejection is improper because there is no motivation in the prior art to combine Clark, Weiner, and Kennedy in the manner suggested by the Examiner.

Clark merely discloses a center beam car having a top chord that resists the lateral displacement of cargo loaded up to the top chord of the center beam. As the Examiner concedes, Clark discloses neither the "selectively affixable member" of claim 1 nor the "top chord cover" of claim 4. Kennedy discloses a fastener to secure a plastic protective liner over the bed of a

pickup truck. The liner is used to protect the bed of the pickup truck from being damaged by cargo. Neither of these references discloses any motivation to combine the cover of Kennedy with the top chord of Clark. The Examiner asserts that this combination would be obvious in order "to provide a mechanism for dissipation of both mechanical and vibrational energy in the car body during transportation of a load, [to] prevent damage to the load." This rationale, however, is taken not from the prior art, but the present application. See specification at p. 21 lines 9-26. See also MPEP § 2143 ("The teaching or suggestion to make the claimed combination must be found in the prior art, not in applicant's disclosure.") Aside from the fact that center beam rail cars and pickup trucks are not analogous art, the protective liner disclosed by Clark is intended to protect the bed of the pickup truck from being damaged by the load, not vice versa, as suggested by the Examiner. Furthermore, there is no suggestion in any prior art reference cited by the Examiner of any need to protect the top chord of a center beam from being damaged by a load, hence there is no suggestion to protect the top chord with a liner as disclosed by Kennedy. The object of the claimed center beam structure is to carry a cargo without damage to the cargo.

The Examiner also seeks to provide a suggestion to combine the center beam car of Clark with the cover of Kennedy by including Weiner in the cited combination. Weiner discloses a pallet rack positioned inside a railway box car (as opposed to the center beam car of claims 1-6.) Because pallets must be loaded longitudinally into the disclosed rack, Weiner indicates that the rack may include skid plates mounted on side supports to facilitate the longitudinal loading and unloading of the pallets within the rack. The Examiner contends that, in view of Wiener, it would have been obvious to one of ordinary skill in the art to modify Clark to include a low friction material along the top chord of Clark "to resist lateral displacement of a load supported by a floor," the low friction material apparently being the removable cover of Kennedy. Weiner, however, does not disclose the use of low friction material to resist lateral displacement of a load. Instead, Weiner merely discloses the desirability of low friction material to facilitate the longitudinal movement of pallets when loading them into a pallet rack within a boxcar. Clark, conversely, discloses a center beam car where cargo is loaded *from above* with a crane. Because cargo does not have to be loaded longitudinally into a center beam car, there is no

need to facilitate the longitudinal loading of cargo in the manner taught by Weiner, hence there is no suggestion in the prior art of a need to include the low friction material of Weiner in a cover of Kennedy over the top chord of Clark.

Accordingly, each of claims 1-6 is patentably distinguishable over the cited combination of Clark, Weiner, and Kennedy. The applicant therefore respectfully requests that the Examiner's rejection of these claims be withdrawn and the claims allowed.

The Examiner rejected claims 12-14 under 35 U.S.C. § 103(a) as being unpatentable over Clark in view of Weiner, each discussed previously, and in further view of Crane, et al., U.S. Patent No. 5,308,675 (hereinafter Crane). Independent claim 12, from which claims 13-14 depend, includes the limitation of a "top chord cover," and the Examiner's rejection of these claims is essentially identical to that of claims 1-6 (Crane being cited because dependent claim 14 includes the element of a top chord cover comprising polyethylene, Crane disclosing that polyethylene may be used in an I-beam to dissipate mechanical and vibrational energy.) As shown above with respect to claims 1-6, however, the prior art does not suggest combining Clark and Weiner to provide a top chord cover, of any composition, in a center beam car. Therefore, claims 12-14 are patentably distinguishable over the cited combination of Clark, Weiner, and Crane. The applicant therefore respectfully requests that the Examiner's rejection of these claims be withdrawn and the claims be allowed.

The applicant has added new claims 15-20. Each of these new claims is patentably distinguishable over the prior art.

In view of the foregoing amendments and remarks, the applicant respectfully requests reconsideration and allowance of claims 1-20.

Respectfully submitted,



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